SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

No. 1315

JOHN S. GRIFFITH, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Appeal to the California Court of Appeal, Second Appellate District, Division Two.

PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR WRIT OF CERTIORARI.

To the Chief Justices and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of a Court of Appeal of the State of California, Second Appellate District, Division Two entered in the above-entitled case.

Citation to Opinions Below.

This case is recorded in 267 A.C.A. 944. It is set forth in Appendix A hereto, *infra*. The opinion of the trial court delivered from the bench commences at page 67 of the Reporter's Transcript certified herewith and the pertinent portion is set forth herein in Appendix B *infra*.

A petition for rehearing in the Court of Appeal was filed in timely manner and denied by the court on January 3, 1969 (order of court certified on March 27, 1969 in certified transcript.) A petition for hearing by the Supreme Court was denied on January 29, 1969 and the order of denial is recorded in the minutes of the Supreme Court for that date in 70 A.C.A. 6 (p. 3 minutes January 29, 1969).

Jurisdiction.

The date of the judgment of the Court of Appeal was December 4, 1968. A timely petition for hearing in the Supreme Court of the State of California was denied on January 29, 1969. A petition for rehearing in the District Court of Appeal was denied on January 3, 1969.

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. §1257(3) (1948) in that the Board of Supervisors of the County of Los Angeles, sitting as a Board of Equalization, so conducted the hearing on the applications of the Petitioners for assessment reductions, as to deny the Petitioners of the due process of law and equal protection of the laws contained in the Fourteenth Amendment of the United States Constitution.

Questions Presented.

Were the Petitioners denied procedural due process or the equal protection of the laws in the following respects:

1. By the appellate court in making the presumption of validity of the act of a public official conclusive.

2. By refusal of the local board of equalization to take official notice of, and the exclusion of, the pub-

lished ratio studies of the State Board of Equalization for the two years immediately preceding the hearing, which studies were offered for the purpose of determining the prevailing ratio of assessed to fair market value within the taxing jurisdiction on the lien date and for the purpose of cross-examining the assessor with respect to his bald generalization pertaining to ratio.

3. By the determination of the appellate court that the administrative body was free to disregard the only substantial evidence in the record relating to market value.

Statutes Involved.

United States Constitution, Amendment Fourteen, Section 1, Clauses 3 and 4

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the law."

California Statutes in 1962 provided:

California Constitution, Article XIII, Section 12, a portion of which provides as follows:

> "All property subject to taxation shall be assessed for taxation at its full cash value."

The first sentence of California Constitution, Article XIII, Section 1, which provides:

> "All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided."

Revenue and Taxation Code §401,

"Except as provided in this part, all taxable property shall be assessed at its full cash value."

Revenue and Taxation Code Section 1815,

"To enable the board to perform its duties under this article and Sections 9 and 14 of Article XIII of the State Constitution, the board shall make a survey, no less often then triennially, in each county to determine the total full cash value of all locally assessable tangible property as of the lien date for the last equalized roll. As a basis for this determination the board shall ascertain the full cash value of a sample of locally assessable tangible property sufficient in size and dispersion to insure an adequate representation therein of the several classes of property throughout the county. The board shall for such purposes have access by its duly authorized representatives to all records, public or otherwise, of any county assessor."

Revenue and Taxation Code §1817,

"The board shall annually estimate any change that may have occurred in the full cash value of locally assessable tangible property between the lien date of the roll for which the last survey was made pursuant to Section 1815 and the lien date of the current roll. The board shall use as the basis for such estimate date on school enrollment, retail sales, wages, or other factors reasonably indicative of change or lack of change in the total full cash value of the property. The relationship between the total assessed value of the tangible property on

the current local roll and the total full cash value of locally assessable tangible property so estimated shall be computed for each county of the State by the third Monday in July of each year. The board shall transmit promptly to each county assessor a statement of its determination relating to his county."

Revenue and Taxation Code §1818,

"The Board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the County made in the last year pursuant to §1815. The tabulation shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of the prior year pursuant to §1817. *All such tabulations shall be open to inspection by all persons interested.*" (Emphasis added)

Revenue and Taxation Code §1819,

"As soon as tabulations have been made pursuant to Section 1818, but not later than August 1, the Board shall give the Assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjust-

ment it deems appropriate as the result of such discussion, but not later than September 2, it shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

California Administrative Code Title 18, Chapter 2, Subchapter 7 relating to intercounty equalization, Section 2703:

"Between the date the notice is given pursuant to the regulation 2702 and September 1, tabulations pertaining to the county are open to and available for inspection during regular business hours at the office of the board in Sacramento, by the county assessor, any deputy assessor designated by him, *any official or employee of the county designated by the board of supervisors* and *any official or employee of a taxing agency within the county designated by its governing body.*" (Emphasis added)

Revenue and Taxation Code Section 405:

"Annually, the Assessor shall assess all the taxable property in the county, except stated as property, to the persons owning, claiming, possessing, or controlling it at twelve o'clock meridian of the first Monday in March. The Assessor shall ascertain such property between the first Monday in March and July."

Revenue and Taxation Code Section 616, first paragraph thereof:

"On or before the first Monday in July, annually, the Assessor shall complete the local roll."

Revenue and Taxation Code Section 1602:

"Until the equalization is finished, the local roll shall remain in the Clerk's office for the inspection of all persons interested."

Revenue and Taxation Code Section 1603:

"Annually, on the first Monday in July, the Board of Supervisors shall meet as the County Board of Equalization to equalize the assessment of property on the local roll. It shall continue in session for that purpose, from time to time, until the business of equalization has been disposed of, but not later than the third Monday in July."

Revenue and Taxation Code Section 1605:

"After giving notice prescribed by its rules, the County Board may increase or lower any assessment on the local roll in order to equalize the assessment of property on the local roll."

California Constitution, Article XIII, Section 9:

"A State Board of Equalization, consisting of one member from each congressional district . . . whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for purposes of taxation . . . the boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county board may prescribe, as to

the county assessments, and under such rules of notice as the board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; . . ."

Section from Government Code Section 15606:

"The State Board of Equalization shall:

* * *

"(e) Prepare and issue instructions to assessors designed to promote uniformity throughout the State and its local taxing jurisdictions in the assessment of property for the purpose of taxation. It may adapt such instructions to varying local circumstances and to differences in the character and conditions of property subject to taxation as in its judgment is necessary to attain such uniformity."

Government Code Section 15607:

"The board shall summon assessors to meet with it or its duly authorized representatives at least once annually, at places within the State it designates, to study or discuss problems of administration of assessment and taxation laws and to promote uniformity of procedure in tax matters throughout the State."

Government Code Section 15640:

"The State Board of Equalization shall make surveys in each county and city and county to determine the adequacy of the procedures and prac-

tices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him by law."

Revenue and Taxation Code §646:

"The records of the Assessor are at all times during office hours open to the inspection of any person charged with the duty of assessing property in the county for any taxing agency."

Revenue and Taxation Code §1609:

"On the hearing of the application, the County Board may subpena witnesses and take evidence in relation to the inquiry."

Revenue and Taxation Code §1610:

"During the session of the County Board, the Assessor and any deputy whose testimony is needed shall be present and may make any statement or produce evidence on matters before the County Board."

Revenue and Taxation Code §407:

"Annually, on the second Monday in July, the Assessor shall transmit a statistical statement to the Board, supplying any statistical information which the Board may require, and shall supply from time to time any other information required by the Board."

Revenue and Taxation Code §408:

"(a) Except as otherwise provided in subdivision (b) any information and records in the assessor's office which are not required by law to be

kept or prepared by the assessor are not public documents and shall not be open to public inspection.

"(b) The assessor shall permit an assessee of property to inspect at the assessor's office any information and records, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of his property, except information and records which also relate to property or business affairs of a person other than the assessee."

Statement of the Case.

This case involves the third year of hearings following the adoption of Section 1815 *et seq.* of the California Revenue and Taxation Code relating to publication of county-wide ratio studies to enable the State Board of Equalization to perform its duties and involves the tax year 1962-1963. In this case seven shopping center owners are involved. During their appearances before the local board of equalization the petitioners again attempted to have the board compel the assessor to disclose the tabulations of ratio for 1962-1963 for Los Angeles County prepared by the state board pursuant to Revenue and Taxation Code Section 1818 in his possession at the time of the hearing. Petitioners had also requested that the board take official notice of the published ratios for the tax years 1960 and 1961 and admit into evidence copies of the publications of the State Board setting forth the ratios with respect to the County of Los Angeles and the state-wide average ratio. As in prior years the local board had refused to take official notice, had refused to

compel disclosure of state board determinations for the 1962-1963 tax year (notwithstanding the addition of Section (b) to Revenue and Taxation Code Section 408), had refused to admit into evidence the published ratio studies for 1960-1961 and 1961-1962, and made no findings of any kind. Unlike the preceding cases for tax years 1960-1961 and 1961-1962, the trial court ruled for Petitioners. He did so, however, on the sole basis of the failure of the Board of Equalization to take official notice of the published ratios for the year 1960-1961 and 1961-1962 and on the basis of the failure of the Board to permit the evidence of said ratios to be placed in the record. He distinguished the prior cases on the ground that there was a better foundation in that the assessor had testified that he was assessing at the same ratio in 1962 as he had in 1960 and 1961 and that he had testified that he had not objected to the State Board determination of ratios for those prior years and did not intend to object to its ratio determination for 1962. The ratios for 1961 and 1962 were respectively 23.3% and 24.4% for Los Angeles County. The tentative tabulations of the state board for 1962-1963 would have disclosed a ratio of 24.6% for Los Angeles County.

The petitioners had appeared before the Los Angeles County Board of Equalization commencing July 19, 1962. The market value testimony of their expert witness was obtained in an affidavit by reason of the fact that he could not be present on the date set for the hearing although he was present for cross-examination by the counsel for the county on July 27, 1962. Again, the total time involved did not exceed 3 hours and again as in the prior years the assessor introduced absolutely no

testimony relating to his determination of the market value of the subject properties. The only support for his equivocal 50% ratio testimony was the assessor's *ipse dixit*. There was also introduced into the record the Joint Report of the Assessor's Committee on Equalization Procedure and the State Board of Equalization dated October 1, 1956 signed by the assessor of the County of Los Angeles setting forth the basis of the State Board's method to make ratio determinations used at the time of the hearing and concluding that it was a desirable method. The assessor denied that he had signed it, but clearly it was signed with his knowledge and bears his signature. A copy is contained in Appendix A of the respondent's brief, which is a part of the certified transcript supplied herein.

The trial court stated in its opinion that it was bound by prior appellate court decisions relating to the matter of the admissibility of the tentative tabulations in the possession of the assessor for the tax year in question. However, it concluded that based upon the testimony of the assessor that he was using the same ratio in 1962 as he had in 1960 and 1961, it would not be proper to exclude the prior year's published ratio studies on the grounds of irrelevancy which served as the basis of the appellate court ruling by which he felt bound for prior years. He further concluded that the objection relating to statistical inadequacy of the studies went merely to the weight and not to the admissibility of the evidence in that the findings were those of the state agency made expressly under the direction of the legislature and that the burden was on the county to show the examples were inadequate. Furthermore, the court noted that the assessor equivocated throughout the record, was

as evasive as a witness could possibly be in that respect and that his testimony involved a fundamental unwillingness to answer questions in a forthright manner. The trial court then entered judgment for the petitioners herein remanding the matter to the Los Angeles County Board of Equalization and retaining jurisdiction of them for the ultimate disposition with respect to court costs and other questions.

The appellate court again reiterated that its review was limited to a determination of whether or not the Board's action was founded on substantial evidence and whether the Board's ruling denied due process. It concluded, however, in order to justify its decision, that the petitioners had not been hurt with respect to the exclusion of ratio evidence because it had been stipulated that the assessor was testifying that he was in fact applying a 50% ratio within the County and that therefore the Board of Equalization could have relied upon his testimony. It also concluded that in any event such testimony from prior years was irrelevant because what the petitioners were really seeking to do was to show that the county ratio was different from that determined by the State Board of Equalization and that so long as the assessments were "equalized" in the county as a whole, it would make no difference whether there was a discrepancy between the county ratio and the state determined ratio. In arriving at this conclusion, the court did not consider at all the history of the adoption of statutes commencing with Revenue and Taxation Code §1815, the requirement that assessors assess at the statewide average ratio as determined by the State Board of Equalization, and the use of the State Board ratio determinations within the

County, although these matters had been exhaustively briefed. In order to further buttress its conclusion, it held that the only way the prior publication of the ratio studies for the tax years 1960 and 1961 could become meaningful with respect to 1962, was for the petitioners to introduce evidence of the total fair market value of all taxable property in the County in 1962. Since the respondents tendered no such evidence, it concluded that the Board of Equalization was within its powers when it concluded that the burden of proof of the petitioners had not been sustained. In arriving at this last conclusion it did not consider or discuss the wording of Sections 1815, 1817 and 1818 of the California Revenue and Taxation Code.

Finally, the appellate court held that the presumption of fairness and regularity became substantial evidence itself under the California rules of evidence relating to courtroom trials. Since the Board could have found against the taxpayers in any event, Petitioners could not complain that the action of the Board was prejudicial so long as the presumption of itself was evidence. In effect, in view of the substantial evidence rule on review of administrative hearings, under the holding of the court such presumption becomes conclusive. It is also implied by the court that the testimony of the expert witness of the petitioners could have been rejected by the Board because (1) the fair market value would have been different if the rent were substantially lowered and (2) the Board would not be bound by the uncontradicted valuation testimony.

When the matter was argued it had been heard by Justices Herndon, Roth and Nutter, who also had heard the argument in connection with the tax years 1960 and 1961. The opinion, however, was not signed by Justice Herndon, it was signed by Justice Fleming, who at no time had heard the argument or had read the briefs and who was not stipulated to have the right to render an opinion in the absence of hearing the argument. Justice Herndon, however, wrote the opinion in the case of *County of Los Angeles v. Tax Appeals Board No. 2*, 267 A.C.A. 935, 940-941, 73 Cal. Rptr. 469, one day before the date of the opinion herein. In affirming the opinion of the Superior Court Judge, who also wrote the appellate opinion in the case at bar, the same court of appeal held that there must be substantial evidence in the light of the whole record to sustain the finding of the local board of equalization. It also held in effect that very, very rough approximations or very general statements constitute evidence sufficient to meet the taxpayers burden in hearings before Boards of Equalization concerned with matters identical to those in which the petitioners were involved, indicating in such opinion that the owner's opinion of value without more would be accepted by the local quasi-judicial adminstrative board as substantial evidence. The opinion is set forth in Appendix C.

REASONS FOR GRANTING THE WRIT.

To Adopt the Ruling of the Appellate Court Herein Is to Condone the Long Continued Lawless Enforcement of the Law by California Assessors and to Affirm the Lack of an Effective Remedy for California Taxpayers Who Assert Improper Valuation or Discrimination.

By reason of the statutes and practice of the local board, the hearing could not be had after the date of publication of the State Board of Equalization ratios for the year in question. The California appellate courts have ruled that published ratios for immediately prior years were not admissible, and that the showing of a discrepancy of assessed valuation of adjoining similar property is not sufficient evidence of the county-wide ratio. The commentators in all of the law journals and the Advisory Committee to the President and virtually all objective writers on this subject indicate that the State Board studies, particularly those of California, should be used to show the prevailing ratio within the community. However, the burden of the taxpayer to show the prevailing ratio in the year 1962-1963 was virtually impossible by reason of the rulings of the California appellate courts. See Klein, The Ratio Becomes Rational, 41 State Bar Journal, 662-668; Carr Property Assessments, 39 State Bar Journal, 887; Carr Need for Disclosure in Property Tax Proceedings, 40 State Bar Journal, 794. *Web Service Co. v. County of Los Angeles,* 242 Cal. App. 2d 1, 6, 51 Cal. Rptr. 753 (1966). If no effective remedy exists for taxpayers, the quality of assessment administration must necessarily diminish and thereby effect Federal-State relationships. See, Advisory Commission on Intergovernmental Re-

lations, The Role of the States in Strengthening the Property Tax, Vols. I and II (1963).

It is also necessary that this court intervene in a county such as Los Angeles County which has over 7 million people to compel the County Board of Supervisors and all taxing officials to be aware of the mandate of the law. Thus, the California legislature expressly adopted on June 12, 1968 an amendment to the Revenue and Taxation Code Section 1609.2 in conformance with what were the general rules relating to administrative hearings, but which again in tax matters had been ignored by the California courts. That statute provided expressly that the hearing need not be conducted according to technical rules relating to evidence and that any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions. It became effective on November 13, 1968. Notwithstanding this statute, the Los Angeles County Board of Supervisors adopted Rules for the conduct of the Board of Equalization within Los Angeles County, effective December 31, 1968, which expressly provided that the formal courtroom law of rules of evidence applied, particularly those used in eminent domain cases.

Furthermore, if the courts are free to disregard at their whim what they would consider to be substantial evidence were it introduced by the assessor in order to justify a tortured decision and if they can be permitted to make a rebuttable presumption in substance conclusive and to thereby deny to petitioners a true hearing, then

there is no longer any rule of law. The presumption that official duty has been performed upon which the court relies is contained in the section under "Disputable Presumptions." California Code of Civil Procedure 1963 (15). The decision of the appellate court here is tantamount to saying that although a convicted felon has committed acts which were disclosed through illegal search and seizure or by way of a confession extracted without giving him the cautionary instructions relating to his right to have counsel, that nevertheless since the jury found the facts to be true, and they are true, he cannot complain. The suppression of the ratios in the possession of the assessor amounts to an act of the State calculated to keep the best evidence used in matters literally effecting the disbursement of billions of dollars within California from being used to determine the fundamental question of the basis of assessed value which should be applied to market value determinations. if the system is to work, then it is essential that there be honest, fair and efficient assessment of property taxes for the citizens not only of California but of all other states.

The history of the ratio determinations and publications is illustrated by the 1967-1968 Annual Report of the California State Board of Equalization commencing at page 9 thereof substantially as follows:

> There is more state involvement in California in connection with property taxation than in many jurisdictions. It arises out of the concern of the legislature that the laws be uniformly administered. In the early years of California, state government relied heavily on property taxes to supply revenue. Since local officials made all assessments

until 1879 and all except certain railroad assessments thereafter, it was important that each county assess at approximately the same percentage of full value. The State Board of Equalization was created in 1879 because of this need. Its primary duty consisted of adjusting local assessment rules to uniform levels so that each taxpayer would be equally treated for state tax purposes. In 1911 this was changed after the adoption of a constitutional amendment involving separate sources of state taxes and local taxes. Most important new state taxes involved gross receipt levies on the major utility groups, whose operating properties were then relieved of local ad valorem taxes. The Board was given responsibility for administration of the taxes that were substituted for the state's previous share of general property tax. However, in 1933 the property tax was no longer able to support the growing cost of education and other government functions. Accordingly, the California legislature adopted the so-called Riley-Stewart Act, which among other things adopted the general retail sales tax. The plan also provided for the assessment of the properties of most public utilities by the State Board of Equalization and the subjection of such property to local general property taxes instead of state gross receipt taxes. The Board then resumed its activities in the property tax field through a newly found 'Valuation Division.' When the sales tax generated substantial sums of money which flowed into the general fund these revenues provided the means of generous financial aid to local school districts. While earlier grants

were simply multiples of average daily school attendance, post-war grants included increasing amounts of equalization paid which varied inversely with the abilities of school districts to finance their needs out of locally imposed property taxes. *It was thus clear that, unless all assessors used substantially the same concept of market value and the same percentage of market value for their assessed value, this equalization aid would be misallocated.* The legislature, in order to avoid the frustration of the school aid law, provided the State Board of Equalization with the budget needed to renew the intercounty equalization activities revived in 1935, but which had lapsed two years later. Each county's assessment roll was 'sampled,' appraisal of the properties in the sample were made to estimate the ratio of the total assessed value to the total market value of locally assessable property on the 1955 lien date. This function, with refinements adopted in 1956, was subsequently spelled out in the Revenue and Taxation Code following the hearings of the Joint Interim Committee on Assessment Practices of California Legislature in 1959 and has been continually followed by the State Board.

In 1955 the State Board compelled the wholesale raise of assessment levels in some 14 counties. State of California, *Annual Report of the State Board of Equalization* for 1954-55, page 5. Litigation resulted and only in one case, where a fair hearing was not given the County, was the assessment level not raised. *People v. County of Tulare,* 45 Cal. 2d 317, 289 P. 2d 11 (1955). *McDougall v. County of Marin,* 208 Cal. App. 2d 65, 67; 25 Cal. Rptr. 107 (1962). In fact, the State Board

conducted a survey of the local county assessment administration practice since 1947 and in 1955 it established in statewide average ratio tolerance zones centered around 25% of market value. The county assessment ratios determined by the State Board of Equalization are used to modify locally assessable valuations that determine state equalization aid, supplemental equalization aid and transportation aid to school districts which now aggregate nearly a half-billion dollars a year in California, repayment of state loans to school districts for capital investments, school district debt limits, the tax rates of certain intercounty taxing districts and per capita state grants for county and city libraries. The ratios are also used to determine whether the county must provided equalization aid to school districts, a requirement whenever a county's average assessment ratio persistently falls below the statewide average and one or more districts are eligible for equalization aid. For a general discussion in connection with the duty of the State Board to maintain assessment ratios in all California Counties at the same level see the dissent of Justice Traynor in *People v. County of Tulare, supra,* 321, 322. *McDougall v. County of Marin, supra,* 70-72 expressly held that the power to compel the counties to assess at a uniform ratio existed in the State Board by virtue of Article XIII, Section 9 of the California Constitution.

The attitude of the local assessors is not limited, however, to the local boards of equalization, for the State Board of Equalization subsequent to 1955, knew that it was no longer assessing public utilities at 50% of the full value, although it had announced that it in fact was so doing. It had determined that the ratios

ranged between 20% and 30% of full cash value. This was confirmed in the Joint Interim Committee Report, *supra,* and the Board of Equalization, because it feared that continued announcement of this ratio used by it for utilities would have led to the pursuit by state assessed utility taxpayers of litigation on file, determined in 1959 to forego the announcement of the assessment ratios. California State Board of Equalization, 1967-1968 Annual Report, pp. 15-16.

In validating the use of fractional assessments, the appellate district of the court of appeal to which this petition is directed through the very division which wrote the opinion in *Web Service Co. v. County of Los Angeles,* 242 Cal. 2d 1, 51 Cal. Rptr. 753 (1966), found that prevailing ratios of assessed to fair market value averaged in California for the years 1960-1961, 1961-1962, and 1962-1963, 22.6, 23.5 and 23.8% of true value respectively. See *Hanks v. State Board of Equalization,* 229 Cal. App. 2d 427, 428, 40 Cal. Rptr. 478 (1964).

The same division, in *A. F. Gilmore Co. v. County of Los Angeles,* 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 (1960), stated in substance that the opinion testimony of both experts in that case constituted substantial evidence. That court further held that the term "substantial evidence" should be construed to confer finality upon an administrative decision on the facts when, upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man acting reasonably might have reached the decision, but on the other hand, if a reasonable man acting reasonably could not have reached the decision from the evidence and its inferences, then

the decision is not supported by substantial evidence and should be set aside. The California courts have long equated "full cash value" with "fair market value." *County of Sacramento v. Hickman,* 66 Cal. 2d 841, 846, 428 P. 2d 593 (1967). In the present case, the annual publications of the California State Board of Equalization since 1955, including the tax year in question, had shown that the ratio did not exceed 25% of full cash value in Los Angeles County. The expert witness testifying for the petitioners had valued over 125 shopping centers. He set forth in great detail his value conclusions and the basis for such opinions, including the stabilized net operating income before depreciation and interest deductions and the capitalization rates applicable thereto. In the preceding year, his testimony had been admitted after he was required to qualify as an expert over the objection of the county counsel. His affidavit was accepted as evidence by the Board of Equalization in the present hearing. It had been the third year that this expert had testified before that Board. Admittedly, no market value testimony whatsoever was introduced by the assessor and in fact it is clear from the testimony of the record that all the assessor was doing was comparing the assessed valuation of one parcel of property with assessed valuation of another. The assessor introduced absolutely no evidence of capitalization rates of, net operating income, of replacement costs of sales, or of any other matters that might be considered by the trier of fact in considering the market value of the property of the Petitioners. In short, if *County of Los Angeles v. Tax Appeals Board No. 2 supra,* was properly decided there is no substantial market value evidence from the assessor in the present case upon which the local board could have relied.

The method of capitalizing net operating income to arrive at market value is a generally accepted method of valuation in California. *California Portland Cement Co. v. State Board of Equalization,* 67 Cal. 2d 578, 583-585, 432 P. 2d 700 (1967). Specifically, in connection with shopping centers, the highest courts of other jurisdictions have approved valuations by the taxpayer based solely upon capitalization of net operating income. Appeal of *Pennsylvania Northern Lights Shoppers City Inc.* (Pa. 1963) 25 Beaver County Legal Journal 18, affirmed (1965 Penn. Sup. Ct.), 419 Pa. 31, 213 A. 2d 268; *Mid Island Shopping Plaza Inc. v. Podeyn,* 204 N.Y.S. 2d 11 (1960), affirmed 218 N.Y.S. 2d 249, affirmed 224 N.Y.S. 2d 283, 180 N.E. 2d 63 (1961). The Board of Tax Appeals of the State of Ohio has followed the procedure which was attempted by the petitioners herein. *Southland Stores No. 3, Inc. et al., Appellant v. Cuyahoga, County Board of Revision, Appellee,* Case No. 66115, 66116 and 66117 (August 6, 1968).

In other jurisdictions, studies made of ratio by state agencies have been held to be admissible and to establish the ratio between the full fair cash value and the assessed value. *People v. Gulf, Mobile and Ohio Railroad Co.,* 28 Ill. 2d 605, 195 N.E. 2d 174 (1963); *People v. Chicago and Northwest Railway Co.,* 28 Ill. 2d 205, 195 N.E. 2d 780 (1963); *In re Appeals of Kent,* 34 N.J. 21, 166 A. 2d 763 (1961). See also *Mid Island Shopping Center Inc. v. Podeyn, supra.* In Ohio it is reversible error not to admit into evidence the assessment ratio studies of the State Board of Tax Appeals. *Frederick Building Co. v. State Board of Revision,* 5 Ohio St. 2d 220, 215 N.E. 2d 388 (1966).

The court did not at all discuss and apparently does not consider the cases cited to it in connection with the method of capitalizing the leasehold income which has been expressly approved by the California courts. There was no testimony in the record that the rental paid by the tenants was so favorable that there existed a bonus value. See *Central Manufacturing District, Inc. v. State Board of Equalization,* 214 Cal. 288, 293-294, 5 P. 2d 424 (1931). A case cited to the court and not discussed by it had just been decided and had held expressly that an expert could consider the effect of a specific lease on the value of property. *People ex rel. Dept. of Public Works v. Lynbar, Inc.,* 253 Cal. App. 2d 870, 61 Cal. Rptr. 903 (1967). The court noted in footnote 12 of the *Lynbar* case that it is generally recognized that a lease favorable in rent to the landlord enhances, not only the market value of his interest in the fee, but also the market value of the fee itself.

The case which the district court cites for its conclusion that the expert's opinion need not be accepted even though uncontradicted, holds nevertheless, such testimony is substantial evidence. *Hemmerling v. Tomley Inc.,* 67 Cal. 2d 572, 577, 432 P. 2d 697 (1967). Here, the State Board of Equalization published studies were being sought to be admitted in evidence. There had been no cross-examination of Mr. Glass at the time petitioners sought to introduce the ratio studies and his testimony stood in the record alone uncontradicted and unimpeached. Therefore, a reasonable man acting reasonably could have relied upon such testimony as evidence of market value of the petitioners' property. The State Board's ratio determinations then could have been relied

upon in turn under the *Gilmore* case by that same reasonable man as evidence of the ratio prevailing generally within the County of Los Angeles on the lien date and could have applied to such market value determination, so far as the prior years' ratio determination. In *Leach Corp. v. County of Los Angeles,* 228 Cal. App. 2d 634, 641, 39 Cal. Rptr. 654 (1964), the unsubstantiated ratio testimony of the assessor, directly in conflict with all of the State Board findings over the years and with the findings of the legislature that 50% ratio testimony is not entitled to credibility, and with the reliance of the appellate courts upon ratios substantially lesser in amount, was nevertheless held to be substantial evidence in the face of a conflict. See also *City of Los Angeles v. County of Mono,* 51 Cal. 2d 843, 851-582; 337 P. 2d 465 (1959). In *A. F. Gilmore Co., supra,* one expert witness relied upon an agreement made seven years before the valuation date and the condemnation award made four years before the valuation date. In *County of Los Angeles v. Assessment Appeals Board No. 2, supra,* owner's opinion of value without more would be accepted substantial evidence. In *Rancho Santa Margarita v. San Diego County,* 135 Cal. App. 134, 142-143; 26 P. 2d 716 (1935) evidence comprised of the transcript of the proceeding year's hearing was held to be substantial evidence for the purpose of market value determination in a subsequent year. In any event, without the findings, the matter was not ripe for decision. *County of Amador v. State Board of Equalization,* 240 Cal. App. 2d 205, 49 Cal. Rptr. 448 (1966).

Conclusion.

The very essence of a "hearing" requires as an essential to it that a person shall have the right to support his allegations by proof, however, informal and by argument, however brief (1 Davis Administrative Law, Sec. 701, p. 407). In such adjudicative hearings as before a Board of Equalization the essence of justice is largely procedural and it is procedure which tells the difference between the rule of law and the rule by whim or caprice which gives rise to frustration of the legislative will and which causes the problems in which many of the local jurisdictions administering property taxes now find themselves. If the petitioners are required to present to the administrative agencies their full case, as is California law, they should not be denied the right to obtain from the agency certain key evidence of ratio in the possession of the agency or at least to introduce evidence which would tend to counteract the broad general statements of the assessor, unsupported in years of studies, with respect to the ratio which he is using.

Since the assessor is by law required to make an assessment of the property each year (Revenue and Taxation Code Section 405), and need not complete the assessment until July 1 (Revenue and Taxation Code Section 616) at which time equalization commenced (Revenue and Taxation Code Section 1603), the only reliable survey of ratios within such restricted period must necessarily be that of the State Board. To offer something less than proof of the assessment ratio of the entire county was of no use. *Best v. County of Los Angeles*, 228 Cal. 2d 655, 657 Cal. Rptr. 665 (1964).

Under such circumstances for the court to say that the petitioners would have to demonstrate that there had been no change in market value for the whole Los Angeles County from a preceding year in order to use the ratio determinations from that year at the subsequent year's hearings is simply to deny any method of proof to the petitioners. Such statement would indicate that the Court had not read Sections 1817 and 1818 of the Revenue and Taxation Code, for under those Sections the Board was required to estimate the change in market value for all local assessable property in the County between the lien date of the last survey under 1815 and that of its current roll and the derivation of total market value of such property from year to year. Furthermore, when the statutes are read commencing with Article XIII, Section 9 of the California Constitution, if intercounty equalization is to be meaningful, great probative validity must be given to the studies of the California Board of Equalization. The entire statutory scheme of ratio determinations in California trends forward for three year periods the market values used for the original ratio determinations (Revenue and Taxation Code Section 1815), *i.e.,* an actual appraisal is made triennially. See Joint Report of Assessors Committee on Equalization Procedures and the State Board of Equalization, Appendix "A", pp. 6-8, Respondents' Brief in No. 31826.

This Court is not unfamiliar with the problems of property taxpayers, *e.g. Sioux City Bridge Co. v. Dakota County,* 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Township of Hillsborough v. Cromwell,* 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946). It has

stated that a commission reporting its conclusion but not the underlying proof in refusing to disclose documents denies the petitioner of fair hearing required by due process. *Ohio Bell Telephone v. Commission,* 301 U.S. 292, 300-303 (1937).

The petitioners here ask very little. They ask to be remanded to the Board of Equalization of the County of Los Angeles for a hearing, as the Superior Court Judge who tried this matter determined, after having heard the 1960 and 1961 matters. Such action will not destroy the tax base of the jurisdiction nor harm it in any fashion. If anything, it will assure that the system will work and maintain its viability. Otherwise, notwithstanding the reforms of the California legislature the holding which permits the Board of Equalization to freely disregard unimpeached and uncontradicted evidence in the record of an administrative hearing, particularly on those counties where Boards of Supervisors still constitute such Boards of Equalization, is tantamount to frustrating the entire legislative mandate. It is respectively submitted that due process requires more than that which was granted to the petitioners by the Board of Equalization and by the appellate courts of California.

Respectfully submitted,

BAKER, ANCEL & REDMOND and
SMITHERS, GOOD & POTTER,
By LOUIS R. BAKER,
Attorneys for Petitioners.

APPENDIX A.

Opinion of the Court of Appeal.

[Civ. No. 31826. Second Dist., Div. Two. Dec. 4, 1968.]

John S. Griffith et al., Plaintiffs and Respondents, v. County of Los Angeles et al., Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County. Martin Katz, Judge. Reversed.

Action to recover real estate taxes paid under protest. Judgment for plaintiffs reversed.

Smithers, Good & Potter, Clyde H. Potter, Jr., Baker, Ancel & Redmond and Mark G. Ancel for Plaintiffs and Respondents.

John D. Maharg, County Counsel, and A. R. Early, Assistant County Counsel, for Defendants and Appellants.

NUTTER, J. pro tem.*—This action was brought by seven owners of shopping centers in Los Angeles County to recover real estate taxes paid under protest. The cases involve questions concerning the methods of proving discrimination or unfair assessments of taxpayer's real property with particular problems directed to methods of proof of the ratio prevailing within the county of assessed valuation to market valuation for the tax year in question. It was the contention of respondents that the 1962-1963 tax assessment of their real property was excessive and that when they presented their protests to the Los Angeles County Board of Su-

*Assigned by the Chairman of the Judicial Council.

pervisors sitting as a board of equalization they did not receive a fair hearing and the board committed error in certain of its evidentiary rulings concerning the ratio determinations of the State Board of Equalization. The trial court agreed with respondents and made findings to the effect that the board denied respondents due process by excluding evidence of the ratio studies made by the State Board of Equalization for the tax years of 1960-1961, 1961-1962. The trial court remanded the matter to the board for a new hearing for determination of the issues raised by respondents' petition.

The hearing before the county board took place in July 1962. The matter came to trial before the superior court in July 1966. The court sitting without a jury received evidence of the proceedings before the board and other rejected evidence.

The court found: (1) That the respondents introduced substantial evidence of market value of the property for the tax year 1962-1963 and they attempted to introduce substantial evidence of the ratio prevailing generally of assessed to fair market value of locally assessable tangible property as of the lien date but that the Board of Equalization of the County of Los Angeles refused to admit such evidence. (2) That the evidence which the respondents sought to introduce consisted of certain ratio studies made by the California State Board of Equalization for the tax years 1960-1961 and 1961-1962 which showed ratios respectively of 23.3 percent and 24.4 percent for Los Angeles County and a statewide weighted average of 22.6 percent and 23.5 percent for each of such years. (3) That the assessor had testified that he was assessing at the same ratio in 1962 as he had in 1960 and in 1961 and that he had further testi-

fied that he had not objected to the state board determinations of ratio for those years and did not intend to object to its ratio determination for 1962.

The trial court further found that the board of equalization refused to take official notice of the determinations of ratio published by the state board for the tax years 1960-1961 and 1961-1962 on the grounds of *irrelevancy* and that had the board taken official notice of such ratios it *could have found* that the prevailing ratio in Los Angeles County in each of such years was 23.3 percent and 24.4 percent and that the statewide weighted average in each of such years was 22.6 percent and 23.5 percent and that substantially identical ratios prevailed in Los Angeles County for the tax year 1962-1963; that the refusal of the board of equalization to admit into evidence the state board determinations and the refusal to take official notice of such determinations precluded the respondents from introducing into evidence at the hearing before the County Board of Equalization substantial material evidence of the prevailing ratio for the tax year in question, which evidence, when applied to the market values of the property of the respondents would have tended to disclose substantial over-assessments and resultant discrimination. The trial court further concluded that by virtue of these findings, additional findings would be surplusage and made no other findings as to the other issues raised; that the action of the county board was void.

The scope of judicial review in cases such as this is explained in *Bank of America v. Mundo,* 37 Cal.2d 1, at page 5 [229 P.2d 345]: "The duty of determining the value of the property and the fairness of the assessment is confided to the appropriate county board of

equalization. Furthermore, in discharging this duty, the board's determination upon the merits of the controversy is conclusive; the taxpayer has no right to a trial de novo in the superior court to *resolve conflicting issues of fact as to the taxable value of his property.* (*Universal Consol. Oil v. Bryam,* 25 Cal.2d 353 [153 P.2d 746]; *Eastern-Columbia, Inc. v. County of Los Angeles,* 70 Cal.App.2d 497, 500 [161 P.2d 407].) The question presented to the superior court in such an action is *whether there was evidence of sufficient substantiality before the board to justify the finding* (*Kaiser Co. v. Reid,* 30 Cal.2d 610, 626 [184 P.2d 879]), and in the absence of fraud or malicious or arbitrary use of its powers the *board is the sole judge of questions of fact and of the values of property.* (*Los Angeles Gas & Elec. Co. v. County of Los Angeles,* 162 Cal. 164, 170 [121 P. 384].)" (italics added.)

"[T]he board's determination upon the merits of a controversy is conclusive; the taxpayer has no right to a trial de novo in the superior court to resolve conflicting issues of fact. . . ." (*Best v. County of Los Angeles,* 228 Cal.App.2d 655, 657 [39 Cal.Rptr. 665].) The taxpayer has the burden of showing the board that the assessor's figures are improper and the assessments are not fair and equitable. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478 [284 P. 1072]; *Wild Goose County Club v. County of Butte,* 60 Cal. App. 339, 342 [212 P. 711]. See *Utah Const. Co. v. Richardson,* 187 Cal. 649, 654 [203 P. 401].)

" 'It is a rule applicable to assessors and to boards having assessing powers that it is presumed that the assessing officers have properly performed the duties entrusted to them and, consequently, that their assessments are both regularly and correctly made.' " (*Best v. County of Los Angeles, supra,* at p. 657.)

The cases were tried on the theory that assessments on the taxpayer's property to its value exceeded that generally prevailing in the county. For the taxpayers to substantiate this theory it would be necessary for them to submit evidence that there was a disparity of the ratio between that applied to appellants' property and that applied to other property generally prevailing in the county. To prove these contentions, the taxpayers must, of course, show the ratio prevailing generally and the ratio in his case. To sustain his burden the taxpayer must at least make a prima facie showing in this regard. That is, he must introduce some evidence of the assessment inequality before there is any burden on the assessor. Without this prima facie showing the assessor is not obliged to go forward with any evidence. He may stand on his presumption that the assessment is fair and equitable.

Accordingly, this court must determine if, as determined by the trial court, the evidentiary rulings of the board prejudiced the respondent-taxpayers in proving the assessment ratio prevailing generally for the tax year in question by excluding substantial evidence of the ratio or refusing to take judicial notice of the

state board ratio studies for prior tax years. If so, there would be a violation of due process. (*Leach Corp. v. County of Los Angeles,* 228 Cal.App.2d 634, at p. 642 [39 Cal.Rptr. 654].)

EVIDENCE OF RATIO

For the most part, respondents' efforts were directed toward an attempt to show that the assessor had used improper methods; that the county ratio of assessment was different from that determined by the State Board of Equalization.[1]

Proof of the difference between the state determined ratio, if it was a fact and that utilized by the county, would not in itself prove a discriminatory assessment practice against taxpayers.

Assessments are required to be equalized in the county as a whole, and discrepancies as between particular properties do not necessarily establish that plaintiffs' assessments were unfair as compared to the county as a whole. (*Wild Goose Country Club v. County of Butte,* 60 Cal.App. 339 [212 P. 711]. See *A. F. Gilmore Co. v. County of Los Angeles,* 186 Cal.App.2d 471, 476 [9 Cal.Rptr. 67]; *Alpaugh Irr. Dist. v. County of Kern,* 113 Cal.App.2d 286, 294 [248 P.2d 117]; *Birch v. County of Orange,* 88 Cal.App. 82, 85 [262 P. 788].)

It assessments were equalized for the county as a whole, it would make no difference whether there was a discrepancy between the county ratio or the state determined ratio.

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[1]Some of the problems giving rise to this litigation were remedied at least in part by the 1966-1967 amendments to the Revenue and Taxation Code. (See *Aftermath of Scandal,* 41 State Bar Journal 662 (1966), Klan and Platt.

A key issue in this case is the effect of a stipulation regarding County Assessor Quinn's testimony concerning the county ratio of assessed valuation to market valuation. If this stipulation were binding on respondents as to the fact of the existing county ratio for the tax year in question, then the question of whether the board excluded evidence of the state board's determination of the ratio would be moot.

Mr. Early, Deputy County Counsel, was asked by counsel for the respondent-taxpayers, Mr. Ancel, if he would stipulate that the ratio of assessed to fair market value prevailing generally in the county as of the lien date for 1962 was 50 per cent. Mr. Early stated, "With the added qualification that it is 50% of Mr. Quinn's, the Assessor's opinion of the fair market value of all property, yes I so stipulate." Mr. Ancel asked if that was according to Mr. Quinn's testimony. Thereupon, Mr. Early stated "That is based entirely on Mr. Quinn's testimony, yes."

The superior court found that Mr. Quinn's testimony was evasive and equivocal, that the stipulation was *not* a stipulation as to the actual ratio of assessed value to market value in the County of Los Angeles for 1962, but was merely a stipulation as to the meaning of the assessor's testimony.

It is unnecessary for us to determine if this was a stipulation binding respondents as to the generally prevailing assessment ratio. It is suffice to say that the board could consider Mr. Quinn's testimony as substantial evidence of the generally prevailing ratio for the tax year in question. It is not our function to weigh conflicting substantial evidence nor should the superior court when it is reviewing administrative board

decisions. (*Strei v. State Personnel Board,* 210 Cal. App.2d 643, 648 [26 Cal.Rptr. 875].) Accepting the stipulation as substantial evidence of the ratio for 1962, were respondents prejudiced by the exclusion or rejection of evidence of the state's determination or ratio for prior tax years?

Issues concerning Los Angeles County Board's admission or exclusion of evidence of the State Board of Equalization assessment ratios for prior tax years were explored and determined in the cases of *Leach Corp. v. County of Los Angeles, supra,* and *Web Service Co. v. County of Los Angeles,* 242 Cal.App.2d 1 [51 Cal. Rptr. 753]. We must determine if the board rulings in this case prejudiced plaintiffs or if there is sufficient cause to vary the rules in *Leach* and *Web Service, supra,* that evidence of ratios in prior years is irrelevant.

The taxpayers requested that the board take judicial notice of the assessment ratios for the prior years of 1960-1961, 1961-1962 as determined by the state board of equalization.

The superior court found that the board committed prejudicial error when it refused to take judicial notice of these ratios. In explaining its tentative opinion the trial court stated from the bench that there is 'a distinction between the situation in this case and those in *Web Service Co. v. County of Los Angeles, supra,* in "the fact that there was testimony here by the Assessor in effect that he was assessing at the same ratio in 1962 that he had assessed in 1960 and 1961."

At the hearing before the board respondents made a motion that the board require the assessor to produce the preliminary, tentative and unpublished tabulations

of that ratio as made by the state board. In ruling on this motion, the trial judge stated he was following the *Leach* and *Web Service* rule, and the board properly excluded the *tentative* tabulations for the tax year in question. Accordingly, the question on this appeal is narrowed to a review of the trial judge's finding that the board's refusal to take official notice of the state's 1960 and 1961 ratio determinations prevented respondents from introducing substantial material evidence of the 1962 ratio; that the evidence of the prior tax years' ratio would have tended to disclose substantial overassessment and discrimination.[2]

Assessor Quinn testified that he was assessing at the same ratio in 1962 that he used in the tax years for 1960 and 1961. Even assuming from this testimony that the board could have found substantially identical ratios for 1962 and 1961 and 1960, under the previous

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[2]Revenue and Taxation Code, section 1818: "The board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the county made in the last year pursuant to Section 1815. The tabulations shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of a prior year pursuant to Section 1817. All such tabulations shall be open for inspection by all persons interested."

Revenue and Taxation Code, section 1819 (as it read in 1960): "As soon as tabulations have been made pursuant to Section 1818, but not later than August 1st, the board shall give the assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjustment it deems appropriate as the result of such discussion, but not later than September 2d, the board shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

rulings of the court in *Leach* and *Web Service, supra,* it is impossible to determine how and in what manner appellants may have been prejudiced, nor how this would have tended to disclose over-assessment and discrimination. We cannot conclude that the exclusion of ratio evidence of prior years prevented appellants from offering to the board any substantial material evidence of the 1962 ratio particularly in view of the stipulation of the parties concerning Assessor Quinn's testimony.

We do not believe there is sufficient difference in the facts of this case or in matters developed on cross-examination of Mr. Quinn with particular regard to his use of the same ratio in 1960 and 1961 to modify the ruling in *Leach* and *Web Service, supra.*

In the *Web Service* case, the taxpayer who was seeking a reduction in his 1961 assessment also requested the county board to take judicial notice of the 1960 county wide assessment ratio as determined by the State Board of Equalization. The action of the Board in refusing to take such judicial notice was upheld by the court. (*Web Service Co. v. County of Los Angeles, supra,* at p. 11.)

Respondents argue that the assessor's testimony that he was assessing at the "same ratio" (i.e. 50 percent of his opinion of fair market value) for the tax year and prior years should compel a modification of the *Leach* and *Web Service* rules. The reason for the rules in these cases still applies to the case at bench. No worthwhile purpose is served by opening up questions concerning prior tax years. New issues and complications are introduced which are irrelevant to the issue in dispute, i.e. the current tax year. Finally, proving that

there was a wide discrepancy between the county assessor's opinion of market value or full cash value and the state board's opinion of a prior year does not prove that plaintiffs' property had been assessed on any different basis from property generally throughout the county. The state board's ratio of prior years would not have materially aided plaintiffs in this hearing, and the assessor's refusal to disclose it was not prejudicial. (*Leach Corp. v. County of Los Angeles, supra,* at pp. 641-642; *Web Service Co. v. County of Los Angeles, supra,* at p. 11.)

Respondents argue that there was evidence of the relationship between the total county assessment in 1961 and in 1962, but this is helpful only if one also knows the total fair market value of taxable property in the county in 1962. Respondents tendered no evidence on this point, or any evidence of disparity of treatment or of the ratio of their property and other property in the county. Thus, any error of the board excluding the evidence even on an impeachment theory could hardly have been prejudicial. On this record a court could not say that the board exceeded its powers when it concluded that appellants failed to sustain their burden of proving they suffered unlawful discrimination. (*Best v. County of Los Angeles, supra.*)

EVIDENCE OF MARKET VALUE

The only testimony of the market value of the shopping centers presented to the board by respondents was the affidavit of one Clem Glass and the enclosures thereto. The exhibits attached to his affidavit show that Mr. Glass used a capitalization of income study to determine the "net value" of the shopping center.

The testimony before the board was that the market value of Alhambra Shopping Center amounted to $1,480,000; the market value of Atlantic Square amounted to $2,600,000; Lakewood Triangle $800,000; Pomona Valley Center $1,730,670; Reseda Plaza $775,990; exclusive of the Food Giant Market; Thriftimart $350,000; Whittier Downs $1,422,768.

Although Mr. Glass stated in his affidavit that he had "appraised the value of the entire fee interest" in each shopping center, he admitted on cross-examination that his valuation opinion would have been different if the tenants had been different; he admitted that his opinion of the fair market value of these properties would not be the same if the rents were substantially lower, for instance one dollar a year; he admitted that a combination of the lessor's interest and the lessee's interest in each shopping center would equal "the actual fair market value of the property"; he admitted that it was "reasonably fair" to say that his appraisals were of the type he would make for a lending institution that intended to loan money to the lessor of a shopping center, and that his opinion of value depended entirely on the terms of the existing leases and the credit standing of the tenants.

Assessor Quinn testified without contradiction that he had assessed the complete estate in each property.

The board could have rejected the Glass testimony.

Opinions of value and other expert opinions, *even though uncontradicted,* are worth no more than the reasons and factual data upon which they are based.

"An expert's opinion is no better than the reasons given for it. ' "If his opinion is not based upon facts

otherwise proved . . . it cannot rise to the dignity of substantial evidence.'" (*San Diego Gas & Elec. Co. v. Sinclair* (1963) 214 Cal.App.2d 778, at p. 783 [29 Cal.Rptr. 769].)

To the same effect is *Hemmerling v. Tomley, Inc.* (1967) 67 Cal.2d 572 at p. 577 [63 Cal.Rptr. 1, 432 P.2d 697], where Chief Justice Traynor states that "We cannot agree, however, with the Hemmerlings' contention that the trial court was bound to accept their uncontradicted valuation testimony." A tax case in which the same result was reached is *Bordenave v. Franchise Tax Board* (1958) 158 Cal.App.2d 291 [322 P.2d 260].[3]

We have determined that appellants have not sustained their burden. The record as a whole supports a finding by the board that the assessments were not unfair or inequitable.

In 1966 the rule was that "If the presumption affects the burden of proof, the court is still required to affirm a verdict or finding in favor of the party relying on the presumption unless it is possible for the court to find that the adverse party overcame the presumption as a matter of law." (California Evidence Code Manual, C.E.B. (1966), § 2.35, p. 434.)

"Whether a party has discharged the burden of proof is a question for the trier of fact to decide. If the party with the burden of proof fails to establish in the

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[3]See also *People v. Bassett*, [a]69 Cal.2d ....., at p. ..... [70 Cal.Rptr. 193, 443 P.2d 777], where the court discussed expert testimony which may not be deemed substantial evidence, citing *Estate of Powers*, 81 Cal.App.2d 480 [184 P.2d 319], and *Estate of Teed*, 112 Cal.App.2d 638 [247 P.2d 54], where the sole testimony of experts was rejected as not being substantial evidence.

[a]Advance Report Citation: 69 A.C. 121, at p. 145.

mind of the trier of fact the requisite degree of belief concerning the fact in issue, the trier of fact is required to rule against him regarding that fact." (California Evidence Code Manual, C.E.B. (1966), § 2.37, p. 435.)

Under the presumption of the fairness and regularity of the assessment and in accordance with the rule prevailing at the time of the trial that "a finding of fact may rest upon a disputable presumption although all the other evidence is contradictory." (*Strei v. State Personnel Board, supra,* at p. 650.) The taxpayers did not sustain their burden of showing the board that the assessor's figures were unfair or discriminating. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478 [284 P. 1072]; *Wild Goose Country Club v. County of Butte,* 60 Cal.App. 339, 342 [212 P. 711]. See *Utah Constr. Co. v. Richardson,* 187 Cal. 649, 654 [203 P. 401].) The excluded or rejected evidence would not have changed the result.

The judgment is reversed.

Roth, *P. J.,* and *Fleming, J.,* concurred.

APPENDIX B.

Pertinent Portions of Reporter's Transcript.

That brings us down to the question of the refusal to receive in evidence the State Board's published determination of assessment ratios in Los Angeles County and in other counties for the years 1960 and '61.

I indicated Wednesday in connection with the—you might refer to it as companion cases, the cases involving the 1961 hearing, that I felt that I would have to rule there was no error by the County Board in excluding the State Board's published determination for the year 1960 on the authority of the Web Service case, the holding in that case.

I was unable, frankly, to distinguish anything in the cases disposed of Wednesday, the cases involving the 1961 hearings of the shopping centers, from the opinion in the Web case.

However, I do see a distinction between the 1961 shopping center cases and these 1962 shopping center cases; a difference which also, at least from the face of the opinion in Web, would exist between Web and these 1962 cases, and that is the fact that there was testimony here by the Assessor in effect that he was assessing at the same ratio in 1962 that he had assessed in 1960 and 1961.

And there was further evidence that at least between 1961 and 1962 there had not been a substantial increase in the assessed values in Los Angeles County.

Now, it seems to me that when the Assessor indicates in substance that he has assessed at a ratio in 1962, which is the same as he was assessing in 1960 and

1961, the question or evidence of that ratio in 1960 and '61 becomes material, not merely as a question of impeachment of the testimony of the Assessor that his present ratio is 50 percent, but actually as evidence as to what ratio was employed by the Assessor in 1962.

In other words, I think that this type of evidence obviates the immateriality or irrelevancy of the earlier years ratio that existed in the 1961 cases, as far as I was concerned, in the Web case, where at least one of the bases for refusing to receive that evidence, or on the basis of the objection made by the County Counsel, and one of the bases of the ruling that the District Court of Appeal was that the assessment ratio in one year is irrelevant to the assessment ratio in the next year. And certainly one can understand that if in effect the burden is on the taxpayer to show that the assessment ratios do not differ, which is, I think, the effect of the Web decision.

But if that does place the burden on the taxpayer, I think he meant (sic, met) it in this case.

Now, it leaves a certain difficulty in this case because I am aware that in Web the Court referred both to the irrelevancy in the concept that I have expressed, and to so-called inadequate statistical data, et cetera. And that raises, of course, the question of whether that alleged statistical inadequacy goes to the weight or to the admissibility of the evidence, and who has the burden, say, of establishing statistical adequacy or inadequacy as the case may be.

Now, Mr. Early and the County Counsel have certainly taken the position that the so-called statistical inadequacy—at least they have taken the position in these

shopping center cases—go merely to the weight and not to the admissibility of the evidence, and I think that's apparent from the record here as to his objections.

I think in one case, and I think it is this case, the present case we are dealing with, Mr. Early makes the express statement that, one argument is made by Mr. Ancel, makes the statement that the question of inadequacy goes to weight rather than admissibility.

And certainly Mr. Early arguing that since the change in the date of the equalization hearing of the County Counsel has never objected to the introduction of evidence of the current published ratios as found by the State Board, he indicates in his view that the question of statistical inadequacy goes to weight rather than admissibility because if it goes to admissibility, why, then it doesn't seem to matter whether the date of the hearing has been changed or not.

Yes, Mr. Early?

MR. EARLY: My argument on the transcript there with respect to statistical inadequacy pertained to the current year's ratio.

And your present argument is overlooking the fact that the 1960-1961 assessment ratios were made on a 1959 sample.

It was not only inadequate, but was remote because of the changes in roll since that date.

THE COURT: Well, Mr. Early, as I understand the procedure, it is that the 1958 sampling is taken—that is, the properties appraised are 1958 properties—

MR. EARLY: Yes.

THE COURT: —that the ratio for '58 would be determined by applying the 1958 assessments to those properties;

That in subsequent years the same samples are used, the same appraised figures are used, adjusted through this trending process.

But this trending process affects only the question of value, not of assessment.

And that the assessment ratio is determined by applying the current year's assessment to the trended value figure.

In other words, that even with these 1958 samples you are involved with the 1959-1960, 1960-61, or whatever year is involved—assessments with regard to those sampled properties.

Am I mistaken in that?

MR. EARLY: No, that is right.

There is ambiguity in what you say.

It is not applied to any trended values per sample, but only to a trended value of the entire county's fair market value.

THE COURT: Well, I think the point really is—maybe you will argue the other way, but this is the way I see it at this time is if you have a determination of a ratio existing in a county on a particular date, that that determination can be of no assistance and can be way off if one of two things happen.

One, you have a change in assessments, or two, you have a real change in values.

And, of course, as far as the change of assessments is concerned, this seems to be taken care of in this case, I'd say by the fact that each year they use the current assessment in determining their ratio.

In the present case I'd say there was also evidence given between 1961 certainly and 1962, there was no appreciable—truly appreciable change in assessments.

I think the problem remains, frankly, because—I am not certain of the basis of the decision in the Web case.

I frankly want to give it further consideration, but I did want to point out these observations because I do feel that whereas in the 1961 hearings I felt bound by the ruling in the Web case that it was not error to exclude the 1960 published figures in the '61 hearings.

I felt so bound because there was a ruling of the District Court of Appeal, and I saw no basis for distinguishing the cases.

Here I do see some basis, and I don't think it is an imaginary basis. I think it is a basis that appears to me to be rooted in real logic, going to the very point of relevancy which was at least one of the grounds upon which the Web ruling was made, and certainly was the ground of the objection before by the County Counsel to the receipt of that evidence before the County Board in 1962.

Frankly, I am going to take this case under submission for that reason, because I do want to give further consideration to this matter.

APPENDIX "C."

Opinion of Court of Appeal Relating to Substantial Evidence.

[Civ. No. 32323. Second Dist., Div. Two. Dec. 3, 1968.]

County of Los Angeles, Plaintiff and Respondent, v. Tax Appeals Board No. 2 for the County of Los Angeles, Defendant and Appellant; Simcon Developers, Inc., Real Party in Interest and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Ralph H. Nutter, Judge. Affirmed.

Proceeding in mandamus to compel the Superior Court of Los Angeles County to set aside a decision of the Tax Appeals Board and remand the cause for rehearing and reconsideration. Judgment granting writ affirmed.

Oliver & Stoever and Norman Oliver for Defendant and Appellant.

John D. Maharg, County Counsel, and A. R. Early, Assistant County Counsel, for Plaintiff and Respondent.

Martin Hersh for Real Party in Interest and Respondent.

HERNDON, J.—Tax Appeals Board No. 2 of the County of Los Angeles appeals from the order of the superior court setting aside one of its decisions and remanding the proceeding for rehearing and reconsideration. The challenged order was made following a hearing upon the petition of respondent County of Los Angeles for a writ of mandate filed in accordance with Code of Civil Procedure section 1094.5.

Appellant contends: (1) "The county may not bring an action against a Tax Appeals Board without express statutory authority [and] the Legislature has not granted authority to the county to bring such an action;" and (2) "There was substantial evidence in the whole record to justify the decision of the board." We have concluded that these contentions should be rejected.

Appellant is a Tax Appeals Board of the County of Los Angeles created by Los Angeles County Ordinance 4099 pursuant to the provisions of article XIII, section 9.5 of the California Constitution. On the first Monday in March 1965, Simcon Developers, Inc.[1] was the owner of certain real property located in the County of Los Angeles on which a partially completed building was being constructed.

The Los Angeles County Assessor placed an assessed value on the improvements on the property on the lien date in the amount of $500,000, i.e., 25 percent of fair market value. Simcon filed a petition for equalization which was heard by appellant board. Following the hearing appellant board reduced the assessed value to $250,000. Thereafter, as previously indicated, respondent County filed a petition to review the board's action. The trial court determined that it had jurisdiction to entertain such petition and that the board's action was

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[1]Although listed as an appellant on the briefs filed herein, the record before us fails to disclose that Simcon Developers, Inc., the real party in interest, filed notice of appeal in the superior court. Appellant board, however, is entitled to prosecute this appeal alone. "Under section 938 of the Code of Civil Procedure any party aggrieved may appeal in a proper case. Where the jurisdiction of a tribunal is involved, and the granting of a writ directed to the tribunal would have the effect of controlling or limiting that jurisdiction, the tribunal is an aggrieved party and entitled to appeal. [Citations.]" (*Koehn v. State Board of Equalization*, 50 Cal.2d 432, 435 [326 P.2d 502].)

not supported by substantial evidence. It therefore remanded this proceeding to the board for rehearing and reconsideration.

Appellant's initial contention need not long detain us. Whatever may be the rule in jurisdictions where no express statutory provision has been made for reviewing the orders of administrative agencies, or other bodies exercising quasi-judicial powers, it is clear that such review is provided in California by Code of Civil Procedure section 1094.5.

"Since the enactment of section 1094.5 of the Code of Civil Procedure, it is no longer open to question that in this state the writ of mandamus is appropriate 'for the purpose of inquiring into the validity of any final adminnstrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer . . .'" (*Boren v. State Personnel Board,* 37 Cal.2d 634, 637 [234 P.2d 981].)

"The controlling statute (Code Civ. Proc., § 1094.5) calls for the issuance of a writ to inquire into the validity of 'any final administrative order.' It is now settled that section 1094.5 governs review by mandamus after a formal adjudicatory decision by any administrative agency. (*Temescal Water Co. v. Department of Public Works,* 44 Cal.2d 90, 101 [280 P.2d 1].) As declared in that case: 'The decisive question is whether the agency exercises an adjudicatory function in considering facts presented in an administrative hearing. . . .'" (*Prip v. City of Santa Barbara,* 214 Cal.App.2d 626, 630-631 [29 Cal.Rptr. 558]; also *Allen v. Hum-*

boldt County Board of Supervisors, 220 Cal.App.2d 877, 882 [34 Cal.Rptr. 232]; *People v. County of Tulare,* 45 Cal.2d 317, 319 [289 P.2d 11].)

Appellant, however, does not actually contend that its orders are not (1) final; (2) made as the result of a proceeding in which by law a hearing is required to be given; (3) at which evidence is required to be taken; and (4) in which discretion is vested in it in the determination of facts. Rather it appears to contend either (1) that the county, as "a political subdivision of the state for purposes of government" (13 Cal.Jur.2d, Countries, § 2, p. 348] representing those citizens resident within its boundaries, is not a "party beneficially interested" (Code Civ. Proc., § 1086) in its decisions; or (2) that each of the several Tax Appeals Boards of Los Angeles County, in legal effect, is an agency of the county itself and therefore their various orders may not be challenged by the county for the reason that in making such a challenge the county is seeking to review its own decisions. No legal precedents are cited to support either of these arguments and they appeal to neither logic nor reason.

The county, acting through its statutory officer, the assessor (Gov. Code, § 24000, subd. (j)), was required to (Rev. & Tax. Code, § 1627), and did, "appear" before the board at the hearing sought to be reviewed. It unquestionably is "beneficially interested" in the matter of a loss of $250,000 in assessed valuation from its property tax base. (Cf. *Jefferson Union School Dist. v. City Council,* 129 Cal.App.2d 264, 267 [277 P.2d 104].) [3] "It is clear that where a party has a beneficial interest in the subject matter of the proceedings and a right to appear, and has appeared before the ad-

ministrative agency he properly may institute proceedings for review by mandamus. [Citation.]" (*Employees Service Assn. v. Grady,* 243 Cal.App.2d 817, 826-827 [52 Cal.Rptr. 831]. Cf. also *Tieberg v. Superior Court,* 243 Cal.App.2d 277, 283 [52 Cal.Rptr. 33].)

The contention that each of the several Tax Appeals Boards *is* the county is mistaken. Even prior to the constitutional amendment in 1962 (art. XIII, § 9.5) authorizing the creation of Tax Appeals Boards, it had been long established that "There can be no doubt that the board of equalization and the board of supervisors are two distinct constitutional bodies, although composed of the same members." (*Napa Sav. Bank v. County of Napa,* 17 Cal.App. 545, 548 [120 P. 449], hearing denied.)

Of course, prior to the creation of the Tax Appeals Boards, and the more clearly tripartite nature of their hearings, it never would have been theoretically or pragmatically necessary for the county, acting through its board of supervisors, to challenge the decisions made by its own members when sitting as a board of equalization. Whether the assessor or the district attorney, who, like the members of the board of supervisors, are by statute designated as officers of a county (Gov. Code, § 24000, subds. (a), (j) and (o)), might have sought review of the decisions of the board of equalization with or without authorization by the board of supervisors we need not undertake to determine. (Cf. Gov. Code, §§ 26521 et seq. and Gov. Code, § 25203.) It is sufficient to hold, as we do, that following the establishment of Tax Appeals Boards, sitting as quasi-judicial bodies over disputes between taxpayers and officers of the county may petition for judicial review of their decisions.

On the issue of whether or not there was substantial evidence to support the decision of appellant board, the record is so very brief that it may be quoted in full. The parties agreed that the assessment ratio was 25 percent of fair market value and, apparently, that the established basis for assessing such value in the case of partially completed improvements was the ratio between the total cost thereof and the portion of that total which had been expanded prior to the lien date. Mr. Sid Hersh, who appeared on behalf of the owner, Simcon Developers, Inc., testified: "The figures indicated on the assessment represent approximately $2 million for improvements. . . . I don't know where the Assessor obtained figures which justify an overall expenditure at the lien date of $2 million. My recollection is that it was closer to a million dollars than it was to $2 million. . . . When completed, [the improvements would be worth] somewhere in the neighborhood of between three and a half million to three million seven hundred thousand dollars. We figured it at that time, very, very roughly, and I am sure that it is a rough thing, we figure the building was approximately a third completed."

Respondent properly invokes the applicable presumption that the assessment made by the assessor was regular and correct. (*Best v. County of Los Angeles,* 228 Cal.App.2d 655, 657 [39 Cal.Rptr. 665.) In addition, the assessor's representative in the instant case testified that information received by its cost estimator "from the H. R. Construction Corporation, this is the builder of the property, shows [a] total contract cost, $3,700,000. Cost as of March 1st, 1965, $2,112,390. The company official who relayed this information was not certain at that time whether the cost included the

architect's, the engineer's, and supervision fees." Based on the above total contract cost alone, the building was 57 percent complete on the lien date.

We may assume for present purposes that "very, very rough approximations" constitute evidence sufficient to meet the taxpayers' burden of showing that the assessments were improper. We may further assume that such approximations would permit appellant board, as trier of fact, to accept the lowest such approximation as representing the true market value of the property on the lien date. Nevertheless, there would still be absolutely no evidence in the record upon which to base a finding that the property was worth $1,000,000 on said date.

The sole witness for the owner did not testify to any such figure. He initially stated that according to his "recollection," the amount expended upon the improvements "*was closer* to a million dollars than it was to $2 million." In ordinary parlance such an expression would mean that the speaker felt that the property was worth somewhat less than $1,500,000. Without speculating as to what figures might reasonably be encompassed within this estimate, it is clear that it constitutes an implicit acknowledgment that the property was worth considerably more than $1,000,000.

Thereafter this witness testified that when fully completed, the improvements on the building would be worth "*between* three and a half million to three million seven hundred thousand dollars" and that it was "approximately a third completed" on the lien date. In the context of the present proceeding this statement constituted an express concession that for assessment purposes, the property had a minimum value of $1,166,666.67 on the day in question.

The trial court therefore properly determined that the board's "implied finding that said improvements had a full cash value as of the first Monday in March 1965 of only $1,000,000 is not supported by substantial evidence in the light of the whole record, nor by any evidence at all." The decision of the board being unsupported by substantial or any evidence, the court had no alternative to "remanding the proceedings to [the board] and commanding [it] to set aside its decision to reconsider its action . . . and to conduct a rehearing" therein. A court has no power to conduct a trial de novo and substitute its findings on matters exclusively within the jurisdictions of the appellant board. (*Simms v. County of Los Angeles,* 35 Cal.2d 303, 318 [217 P.2d 936].)

The judgment is affirmed.

Roth, *P. J.,* and Fleming, *J.,* concurred.

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IN THE

Supreme Court of the United States

October Term, 1968
No. 1315

JOHN S. GRIFFITH, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Appeal to the California Court of Appeal, Second Appellate District, Division Two.

BRIEF IN OPPOSITION.

Opinion Below.

The opinion of the California Court of Appeal (Petition App. A) is reported at 267 A.C.A. 944 and at 73 Cal. Rptr. 773. The opinion was signed by two justices who heard the oral argument, and by another justice (Fleming, *J.*) who was not present. Petitioners sought a rehearing on this ground which was denied. Fleming, *J.*, did not participate in the consideration of this petition for rehearing. Petitioners then filed a petition for hearing in the California Supreme Court on this and other grounds which was also denied.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented.

Petitioners allege that at the hearing before the Los Angeles County Board of Equalization they were denied due process of law

(a) because the board excluded assessment ratio studies pertaining to *prior* years (1960 and 1961) from evidence on the ground that they were irrelevant due to changes in the assessment roll in the intervening years and because they were based on a statistically inadequate sample which was taken back in 1958,

(b) because the opinion below allegedly permits the board to disbelieve petitioners' valuation evidence which had been thoroughly impeached, and

(c) because the opinion below allegedly makes the presumption that official duty has been properly performed in the making of an assessment for property tax purposes "conclusive", even though the opinion applied the presumption only after determining that the petitioners had not made a prima facie case of assessment discrimination, that the record as a whole supported the board's implied finding that the assessments were not unfair or inequitable, and that the excluded evidence would not have changed the result (267 A.C.A. at 955).

Statutes Involved.

The pertinent statutes are set forth in the Petition.

Statement.

Seven shopping center owners herein contested their 1962 property tax assessments before the Los Angeles County Board of Equalization. The board approved the assessments.* They then sued for refunds pursuant to California Revenue and Taxation Code section 5138. Sitting in an appellate capacity, the superior court reversed the board's decision. The superior court disregarded a stipulation which had been requested at the hearing before the board by counsel for the taxpayers, and had been accepted, that the ratio of assessed value to fair market value prevailing generally in the county as of the 1962 tax lien date was 50% of the assessor's opinions of fair market value [Ex. 1, July 19, p. 35, lines 1-11]. The superior court also found that the board had committed prejudicial error by refusing to receive evidence of assessment-ratio studies for *prior* years (to wit, 1960 and 1961) as evidence of the 1962 ratio [C. T. Findings, p. 165, par. III].

The superior court also rejected the county's contention that the taxpayers had failed to sustain their burden of proof and had failed to make a prima facie case of unfair assessment before the board because their only valuation witness did not value the entire fee simple estate in each property—which is what is taxed—but valued only the lessor's interest therein, and that the board properly rejected his valuation opinions because he gave no reasons whatsoever for the capitalization rate[1] which he employed when he made the income

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*Superior Court Exhibit 1 is the transcript of these proceedings.

[1]The capitalization rate plays a "vital role" in the determination of value by the capitalization of income method. *County of Ama-*

(This footnote is continued on the next page)

studies upon which his opinions were based [C. T. Findings, p. 165, par. II].

A further consideration which was not discussed in the opinion below but which was relied on by the county in its brief[2] is that said assessment ratio conclusions were so statistically unreliable as to be inadmissible as evidence of conditions in 1962 because they were based upon a 1958 sample which was only 1/10th the size of that which the State Board itself regarded as the minimum and because almost all of the items on the county assessment roll had been changed between 1958 and 1962.

Under cross-examination by counsel for the taxpayers, the assessor repeatedly, clearly and unequivocally testified that in 1962 he assessed properties at 50% of his opinion of their respective values.[3]

Counsel for the taxpayers then requested a stipulation. He asked:[4]

> "Will you then stipulate, Mr. Early, that the ratio of assessed to fair market value prevailing generally in the County of Los Angeles as of the lien date for 1962 is 50%?"

This stipulation was accepted.

The taxpayers then asked the board to take judicial notice of the assessment ratio for the county as determined by the State Board of Equalization for *prior* years—1960 and 1961; they offered alleged summaries

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dor v. State Board of Equalization, (1956) 240 Cal. App. 2d 205 at 223, 49 Cal. Rptr. 448; *Burrit Mut. Sav. Bk. of New Britain v. City of New Britain,* (1959 Conn. Com. Pl.) 140 A. 2d 324.

[2]Appellants' Opening Brief pp. 8-9, 19-20 and 24-25.

[3]Appellants' Opening Brief pp. 5-7.

[4]Ex. 1, July 19, p. 35, line 1.

of the assessment ratios in all of the counties of the state for 1960 and 1961 [Superior Court Ex. 3; Board Exs. 1 and 2]. Neither of these documents were certified or in any way official. The county objected on the ground that assessment ratios for prior years were irrelevant, and on the ground that they were based upon a 1958 sample which was too small to be statistically reliable. The assessor testified without contradiction that the State Board of Equalization had taken no samples for this purpose in Los Angeles County since 1958[5] and that only 442 samples were then taken from an assessment roll that included 1,740,000 separate parcels of land; he also testified that from 1958 until 1962 there had been over 400,000 changes in the assessment roll each year, a total of 1,600,000 changes. The objection was sustained [Ex. 1, July 19, p. 30, lines 17-19]. No offer of proof was made.

The taxpayers also requested the board to require the assessor to produce a preliminary, tentative and unpublished study of the current 1962 assessment ratio as made by the State Board [Ex. 1, July 19, p. 38], to which objection was sustained on the ground that it was privileged and the State Board had not consented to a waiver of that privilege.[6] The taxpayers' only evidence of the value of their shopping centers was the affidavit of one Clem Glass [Superior Court Ex. 2] and the enclosures thereto. This exhibit shows that Clem Glass was not a real estate appraiser, but was a mort-

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[5]Ex. 1, July 19, p. 23, line 14.

[6]This identical ruling was approved in *Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634, 39 Cal. Rptr. 654 (hearing denied by California Supreme Court) and in *Web Service Co., Inc. v. County of Los Angeles,* (1966) 242 Cal. App. 2d 1, 51 Cal. Rptr. 753.

gage loan correspondent, and that he used a capitalization of income study in every case to determine value. He testified [Ex. 1, July 23, p. 10] that he had used *actual* rental income rather than the estimated fair rental income (or economic rent) of these properties in his valuation studies; nowhere did he give any reasons whatsoever for the rates by which he capitalized this income in order to determine his opinion of value.

He admitted on cross-examination that his opinion would have been different if the tenants had been different [Ex. 1, July 23, pp. 10-11], that his opinion of the value of these properties would not be the same if the rents were sustantially lower, for instance one dollar a year [at pp. 12-18], and that his opinion of value depended entirely on the terms of the existing leases and the credit standing of the tenants (at pp. 14-15). He acknowledged that a combination of the lessor's interest with the lessee's interest in each shopping center would equal "the actual fair market value of the property" [Ex. 1, July 23, p. 14, lines 1-8] but nowhere did he give any consideration to the value of the lessee's interests in these properties.

Mr. Glass also admitted that, other things being equal, according to his method of valuation a property with excellent Class A improvements would be assessed at a lower value than a similar property with poor improvements if good management produced a higher income from the property with poor improvements [at pp. 18-19].

The assessor testified that he had assessed the complete fee simple estate (*i.e.* the lessor's interests combined with the tenants' interests) in each property.

ARGUMENT.

1. The Challenged Presumption Is Not "Conclusive."

The Court of Appeal held in this case that the presumption that public duty has been properly performed and that the assessment therefore is correct justified the board in deciding against the taxpayers because they had not sustained the burden of proof (Pet. App. A p. 14). This obviously is not a "conclusive" presumption at all. It regulates the burden of proof. In 1962 it also constituted substantial evidence which could be weighed against other evidence, a rule which was abolished when California adopted Division 5, Chapter 3 Sections 600-668 of its Evidence Code in 1967 (Cal. Stats. 1965 ch. 299).

2. The Board Properly Excluded Sales Assessment Ratio Studies for Prior Years Because They Were Irrelevant and Because Based on a Statistically Inadequate Sample.

County boards of equalization are created by the California Constitution, Article XIII, Section 9. They perform a judicial function.[7] They may act only on the basis of legal evidence.[8]

In property tax equalization proceedings it is clearly established that "The assessment is presumed to be fair and the burden of proof rests upon" the taxpayer.[9]

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[7] *McClelland v. Board of Supervisors,* (1947) 30 Cal. 2d 124 at 129, 180 P. 2d 678, cert. den. 332 U.S. 823.

[8] *Universal Consolidated Oil Co. v. Byram,* (1944) 25 Cal. 2d 353 at 360, 153 P. 2d 746;
Leach Corp. v. County of Los Angeles, (1964) 228 Cal. App. 2d 634 at 637 and 641-646, 39 Cal. Rptr. 654 (hearing denied by California Supreme Court).

[9] *Bank of America v. Mundo,* (1951) 37 Cal. 2d 1 at 5, 229 P. 2d 345.

Not only is the burden of proof upon the taxpayer who charges that an assessment is excessive, but, as Justice Cardozo said, "the taxpayer must prove, not merely error, but its exact amount."[10]

The actual assessments of the properties were, of course, before the board. Whether these were excessive could be determined only by multiplying the fair market value of each property by the assessment ratio (or fraction of market value at which property throughout the County was assessed). This would show the correct assessment.[11]

We submit that the taxpayers offered no admissible evidence whatsoever to the board of the countywide assessment ratio; hence, they failed to make a prima facie case.

The stipulation that the countywide assessment ratio was 50% of the assessor's opinion of market value should have put the matter to rest. Even in its absence, we submit that the board properly refused to take judicial notice of the assessment ratio studies of the State Board for prior years as evidence of the ratio existing for the current year. The evidence showed without contradiction that 400,000 changes were made in the assessment roll every year, that the State Board's conclusions were based upon a sample taken back in 1958 and that it included only 442 items out of 1,700,000. This was too tiny to produce accurate results and too remote in time to be relevant. The sample was less than 1/40th of 1% of the assessed parcels in the

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[10] *People v. Law,* (1925) 239 N.Y. 346, 146 N.E. 622 at 624.

[11] *A. F. Gilmore Co. v. County of Los Angeles,* (1960) 186 Cal. App. 2d 471 at 476-477, 9 Cal. Rptr. 67 (hearing denied by California Supreme Court).

county. The State Board itself has estimated that over ten times this number, or 4/10ths of 1% of the total parcels, is required to constitute an adequate sample.[12]

Courts in other jurisdictions have also condemned assessment ratios based on samples as small as this one.[13]

The Arkansas ratio study is based on a 3% sample or 31,000 items.[14]

Pursuant to Illinois Revised Statutes 1957, Chapter 120, p. 627, the Department of Revenue of the State of Illinois has studied more than 40,000 sales per year to determine assessment ratios in that state.

The Petition argues at page 21 that the assessment ratios determined in California by the State Board of Equalization are used for many significant purposes. But these are the assessment ratios for the current year, not those for prior years.

The Petition also argues at page 24 that such studies have been held to be admissible by the courts of other states. Again, the opinions cited deal with ratio determination for the current year, not those for prior years.

Petitioners also argue that (pages 27 and 28) to deny the use of the assessment ratios for prior years

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[12]Report of the Senate Interim Committee on State and Local Taxation, Part Six, *Property Assessments and Equalization in California,* (1953) at pp. 267-8; Senate Interim Committee on Governmental Organization, *Equalization of Ad Valorem Tax Assessments in California,* (1957) at p. 28.

[13]*H/K Co. v. Board of Equalization,* (Neb. 1963) 121 N.W. 2d 382 at 388 held 5% of all sales in the county (466 items) to be too small.

J. Rosenbaum & Son v. Coulson, (1955) 246 Iowa 848, 69 N.W. 2d 403 held a sample of 124 parcels to be inadequate.

[14]Proceedings of the 50th Annual Conference on Taxation of the National Tax Association, (1957) W. L. Hinton, Jr., *Property Tax Equalization Program* 171 at 173.

in effect denies "any method of proof to the petitioners." This was not true. Not only could they freely make their own statistically sound sales—assessment ratio study for the current year which would be admissible in evidence, but they could also employ the technique approved in *Birch v. County of Orange,* (1927) 88 Cal. App. 82 at 85, 262 Pac. 788 at 789 (hearing denied by California Supreme Court):

> "Of course, if the taxpayer shows that his property is assessed at a greatly higher proportion of its value than that of several other persons, the inference may arise therefrom in the absence of evidence to the contrary that his assessment is disproportionate to the assessments of the County as a whole. . . ."

We submit that the Board was also justified in rejecting the taxpayers' evidence of value because their only witness did not appraise the entire fee simple estate in the various properties, but had appraised only the lessors' interests therein and had altogether ignored the value of the tenants' interests therein [Ex. 1, July 23, pp. 10-15]. That the taxpayers believed that this was the correct method of valuation is highlighted by the fact that their counsel argued with the assessor that the lessor's interest in each shopping center was all that should have been assessed and taxed [at pp. 15-16].

According to the Clem Glass method, a shopping center worth $1,000,000 would be worth only half as much as a second shopping center worth $1,000,000 if its owner leased it for a rental only half as great as the rental income from the second shopping center. The

witness apparently did not understand that when property is leased to a tenant for less than its economic rent, the value of the lessor's interest is decreased while the value of the tenant's interest is proportionately increased and the over-all value of the fee remains unchanged. Thus, there is no change in the fee value of a property worth $1,000,000 when leased for $1 a year; the fee value consists of the value of the interests of the lessor combined with the value of the interests of the tenants and the total remains $1,000,000. Hence, when property is valued by capitalization of the *actual* rental income therefrom (instead of its estimated fair rental) the appraiser must also determine the value of the tenant's interest and combine it with the value of the lessor's interest in order to ascertain the fee value.

The law requires, of course, that the entire fee simple interest be assessed and taxed even if the owner has leased the property to tenants at a rental so low that it might not be sufficient to pay the property taxes. *Graciosa Oil Co. v. Santa Barbara,* (1909) 155 Cal. 140, 99 Pac. 483.

The Clem Glass approach has been repeatedly rejected by the courts. For instance, the Supreme Court of Appeals of Virginia has stated that "If I owned land worth $10,000 I cannot escape taxation by renting it to a friend at one dollar a year."[15]

Other cases to the same effect include:

In re Property of Pine Raleigh Corp., (1963 No. Car.) 128 S.E. 2d 855 at 859;

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[15] *Richmond, Fredricksburg and Potomac RR Co. v. Commonwealth,* (1962) 203 Va. 294, 124 S.E. 2d 206 at 211.

New Brunswick v. State of New Jersey Division of Tax Appeals, (1963) 39 N.J. 537, 189 A. 2d 702 at 706;

Donovan v. City of Haverhill, (1923) 247 Mass. 69, 141 N.E. 564.

Furthermore, the witness Glass gave no reason whatsoever to justify the extraordinary capitalization rates that he used. The capitalization rate is critical when valuing property by the capitalization of income method. For instance, an income of $100,000 capitalized at 4% indicates a value of $2,500,000; capitalized at 6%, it indicates $1,666,667; capitalized at 10%, it indicates only $1,000,000. The witness generally used a 10% capitalization rate and in some instances went as high as 12% and 15% [see his appraisal of El Rancho Shopping Center, Superior Court Ex. 2]. It is almost trite to say that "An expert opinion is no better than the reasons given for it."

3. In an Attempt to Show That California Taxpayers Lack an Effective Remedy for Inequitable Assessments, the Petitioners Misstate Many Aspects of California Law.

Petitioners complain on page 26 that in the *Leach* case, *supra,* "The unsubstantiated ratio testimony of the assessor . . . was nevertheless held to be substantial evidence." The Petition overlooks the fact that this resulted because in that case the taxpayers themselves called the assessor as a witness and asked for his opinions without establishing either his qualifications or the factual data on which his conclusions were based. As the

opinion says, "This necessarily amounted to a waiver" of such substantiation.[16]

The Petition also on page 26 complains that in *County of Los Angeles v. Assessment Appeals Board No. 2,* (1968) 267 A.C.A. 935, 73 Cal. Rptr. 469 the opinion holds that the owner's opinion of value without substantiation would be accepted as substantial evidence. This is a distortion of what that opinion holds. In fact it held that even if the unsubstantiated owner's opinion of value in that case were to be accepted, "there would still be absolutely no evidence in the record upon which to base" the board's decision, and then proceeded to reverse that decision.

The petitioners murmur about the lack of findings by the board [at p. 26]. They point to no respect in which the court was handicapped in reviewing the board's decision because of the lack of such findings. None were requested and none were then required by statute or custom.[17]

At page 17 petitioners also complain that Los Angeles County is presently (*i.e.* 1969) ignoring an amendment to California Revenue and Taxation Code Section 1609.2 (Calif. Stats. 1968 ch. 1213) which provides that the hearing before a county board of equalization "need not be conducted according to technical rules relating to evidence and witnesses." As originally proposed to the California Legislature this bill (A. B. 1960) used the expression "shall not" which was amended to read "need not." The Petition overlooks

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[16]*Leach Corp. v. County of Los Angeles,* (1964) 228 Cal. App. 2d 634 at 641, 39 Cal. Rptr. 654 (hearing denied by California Supreme Court).

[17]This rule was changed by California Revenue and Taxation Code Section 1605.5, (Calif. Stats. 1967 ch. 285).

the fact that Section 9.5 of Article XIII, California Constitution, which was adopted in 1962 provides that where assessment appeals boards are created in a county to perform the function of a county board of equalization, the county board of supervisors—and not the Legislature—shall adopt rules of procedure for such boards. In other words, Section 1609.2 does not apply to those counties such as Los Angeles where assessment appeals boards have been created.

Conclusion.

There is nothing unique in the decision below. The judgment correctly applies basic principles regarding the burden of proof to the facts established by the petitioners' own evidence. No substantial federal question is involved. We respectfully submit that the Petition should be denied.

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